

INFORMATION PAPER

MCEU-JA (600-50d)

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SUBJECT: Gifts

1. PURPOSE: To inform ERMIC personnel about rules concerning gifts between employees, gifts from outside sources, foreign gifts, and the solicitation of gifts by government employees.

2. REFERENCES:

- a. U.S. Constitution, article I, § 9, cl.8.
- b. 5 U.S.C.A. § 7342;
- c. 31 U.S.C.A. § 1353;
- d. Title 5, Code of Federal Regulations, Part 2635;
- e. Title 41, Code of Federal Regulations, Parts 101-49 and 101-45;
- f. DoD 5500.7-R, Joint Ethics Regulation, Chapter 2 (30 Aug 93) (w/Change 4);
- g. DoD 1005.13, Gifts from Foreign Governments (20 Jul 96);
- h. AR 1-100, Gifts and Donations (15 Nov 83);
- i. AR 1-101, Gifts for Distribution to Individuals (1 May 81).

3. FACTS: Office of Government Ethics (OGE) rules, the Joint Ethics Regulation (JER), and various Army regulations contain a variety of rules concerning gifts, discounts, and similar benefits. These rules are summarized below.

a. The definition of “gift” includes nearly anything of monetary value, including services. It does **NOT** include:

(1) coffee, doughnuts and similar modest items of food and refreshments when offered other than as part of a meal;

(2) greeting cards, most plaques, certificates and trophies that are intended solely for presentation;

(3) any prize, commercial discount, or other benefit which is available to the general public, all Federal employees, or all military members (e.g., military discounts).

Gifts Between Employees

a. General Rule. (5 C.F.R. § 2635.300) Gift-giving between employees is generally prohibited. Employees may not:

(1) give, or solicit contributions for, gifts to someone in their subordinate-official superior chain;

(2) accept gifts from employees who receive less pay, unless there is no subordinate-official superior relationship and there is a personal relationship justifying a gift.

b. Exceptions:

(1) On an occasional basis gifts may be given when:

(a) \$10 or less per occasion (e.g. a birthday gift or a souvenir gift upon return from a vacation) (**no cash**).

(b) Refreshments shared in the office.

(c) Personal hospitality at an employee's home.

(d) Customary gifts given in connection with the receipt of hospitality.

(2) On special, infrequent occasions, subordinates may give a gift to a superior "appropriate to the occasion."

(a) Infrequently occurring occasions of personal significance such as marriage, illness, or birth of a child (does **not** include a promotion unless the employee is also being transferred out of the chain of command).

(b) Occasions that terminate subordinate-official superior relationship, such as retirement, resignation or transfer.

(c) Value of gift normally should not exceed \$300 from a "donating group" whose definition depends on the circumstances. If the gift exceeds \$300 in value, the gift must still be "appropriate to the occasion," and "uniquely linked to the departing employee's position or tour of duty." *To spare yourself and your boss potential embarrassment, do not buy the boss a gift that costs more than \$300.00 without first consulting your Ethics Counselor at JAG.*

(d) An employee may not contribute as part of more than one donating group. If he or she does, the different groups become one donating group.

c. Voluntary contributions of a nominal amount may be solicited only for the following:

(1) The occasional sharing of food and refreshments in the office;

(2) The gift for a special, infrequent occasion.

(3) DoD rule: the nominal amount is defined as \$10; however, while more than \$10 may not be solicited, an individual may offer to contribute more.

d. Gifts from an employee's spouse to another employee's spouse will be considered a gift between employees subject to the above rules, unless there is an independent basis for the gift to the spouse.

e. A finding that gifts are based on a personal relationship (5 C.F.R. 2635.204(b)) may be appropriate, especially among members of the USAR and NG who live and work together in civilian life.

f. The \$10.00/\$300.00 gift limitation applies only to the gift. You do **not** include the cost of food, refreshments, and entertainment provided to the DoD employee and his/her personal guests to mark the occasion for which the gift is given. Such expenses, however, should be reasonable for the occasion.

Receipt of Gifts from Outside Sources

a. General Rule: DoD employees may not solicit gifts. Nor may they accept gifts from a prohibited source or a gift that is offered because of the recipient's official position. There are four steps to determining whether a gift may be accepted. (5 C.F.R. 2635.204)

(1) First, is it a "gift?" As stated earlier, items with little intrinsic value intended solely for presentation, benefits available to all military personnel in a particular geographic area, and coffee and donuts offered during a meeting are examples of "non-gifts."

(2) Second, if it is a "gift," is it a gift from prohibited source?

(a) A prohibited source is someone who does business with the employee's agency, seeks to do business with the agency, conducts activities regulated by the agency; or is an organization, a majority of whose members are prohibited sources.

(b) A gift given because of the recipient's official position is treated as a prohibited source gift.

(3) Third, if it is a "prohibited source gift," does an exception apply? The exceptions are:

(a) A gift with a market value of \$20 or less, not to exceed \$50, in a calendar year from any one source.

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(b) A gift to a group of Federal employees or class of individuals, but not based on official position or rank.

(c) Awards for meritorious public service or achievement if pursuant to an established program of recognition (might require an Ethics Counselor written determination).

(d) Social invitations from other than prohibited sources, but based on the employee's official position, if no fee is charged to anyone attending.

(e) Gifts based on a personal relationship (must be clearly motivated by family or other personal relationship).

(f) Gifts based on outside business or employment relationships (for example, gifts that arise from the spouse's business activities).

(g) Free attendance at widely attended gatherings, typically conferences or seminars, when the supervisor determines it to be in the agency interest for the employee to attend.

(h) Gifts permitted by other statutes, such as gifts from foreign governments accepted under the authority of 5 U.S.C. 7342 (retail value in United States may not exceed \$260).

(4) Fourth, if an exception applies, should it be used?

(a) Exceptions do not authorize bribes! If a gift buys influence, it is a bribe.

(b) A gift may **never** be solicited or coerced.

(c) If the frequency of gifts would lead a reasonable person to believe that the employee is using public office for private gain, they may not be accepted.

b. Disposal of improper gifts. An Ethics Counselor may authorize any one of the following dispositions (5 C.F.R. 2635.205).

(1) The gift may be converted to a gift to the agency, or to an appropriate morale, welfare and recreation activity.

(2) If perishable, the gift may be consumed in the office where received.

(3) The recipient may keep the gift, and pay the donor its cost.

(4) The gift may be returned to the donor.

c. If the value of gifts from a single source is \$250 or more during a calendar year, they **must** be reported on the employee's public (SF 278) or confidential (OGE Form 450) financial disclosure report.

Foreign Gifts

a. DoD employees (including members of the uniformed services) **may not** request or encourage the giving of gifts from foreign governments. They **may**, however, accept certain foreign gifts of "minimal value." Currently, "minimal value" means a fair market value in the United States of \$260 or less. It is the recipient's burden to establish value.

(1) If more than one gift is given at one presentation from the same donor to an employee, they constitute one gift -- values must be aggregated. Gifts from different officials of the same foreign government at the same presentation must also be aggregated. If gifts are from different governmental levels, however (e.g., national, state, local, and municipal), aggregate the levels separately. Gifts received at separate presentations, even on the same day and/or from the same foreign official, are separate gifts; their values are not aggregated.

(2) Gifts to a DoD employee's spouse are deemed gifts to the DoD employee, and gifts from a foreign official's spouse are deemed gifts from the foreign official.

(3) U.S. government employees may also accept gifts of travel (or expenses for travel) occurring entirely outside the United States, even if in excess of "minimal value." Consult your Ethics Counselor at JAG **prior** to accepting gifts of travel, if at all possible. These gifts have separate approval and reporting requirements.

b. U.S. government employees should decline gifts of more than "minimal value." They may be accepted **on behalf of the United States**, however, if refusing the gift would offend or embarrass the donor or adversely affect foreign relations. The gift becomes U.S. government property.

(1) If accepted under these circumstances, the recipient must make a record of the event, including the circumstances surrounding the gift, the date and place of presentation, the donor's name and title who presented the gift on behalf of the foreign government and the identity of the foreign government, the recipient's name, grade and official capacity, and a brief description of the gift including its estimated retail value.

(2) Ordinarily, the gift, along with the information listed above, must be forwarded to Commander, PERSCOM, ATTN: TAPC-PDO-IP, Alexandria VA 22332-0474 within 60 days of receiving the gift. Gifts are then normally forwarded to the General Services Agency for proper disposition. Units can submit requests to PERSCOM to retain gifts locally for use in an official capacity, however (e.g., to display in the unit). The unit may retain the gift pending PERSCOM approval.

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(3) If a unit decides it no longer wants the gift, it must notify GSA, using SF 120, "Report of Excess of Personal Property," within 30 days following termination of official use. Gifts for which GSA determines there are no federal requirements may be sold to the recipient for their appraised value (plus the cost of appraisal).

c. An Army organization may sell or destroy gifts it receives that are less than the "minimal value" at the time of receipt.

d. Recipients may also recommend foreign gifts for donation to public agencies or nonprofit tax-exempt organizations for public display, reference or use.

4. Your point of contact for any questions on gifts or other government ethics issues is the ERM Command Judge Advocate's office at 371-3336.